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NTSB Order No. EA-4470

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 17th day of July, 1996

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14077
v.)	
)	
RONALD A. SANDERS,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on August 22, 1995, following an evidentiary hearing.¹ The law judge affirmed an order of the

¹ The initial decision, an excerpt from the hearing transcript, is attached.

Administrator, on finding that respondent had violated 14 C.F.R. 91.13(a) and 91.173(b).² The law judge, however, reduced the Administrator's 60-day proposed suspension of respondent's commercial pilot certificate to a suspension of 30 days. We deny the appeal.

Respondent, as pilot-in-command, filed an IFR flight plan and obtained an IFR clearance from Henderson, TX to Lawton, OK (north of Dallas/Fort Worth). Unfortunately, respondent confused Henderson and Hillsboro, TX (which are more than 100 miles apart).³ His actual departure point was Hillsboro. Because he was not in the area he believed himself to be, his attempts to contact ATC on frequencies useful had he departed from Henderson were unsuccessful. He soon reached a Waco approach controller, however, who testified that respondent's unscheduled arrival caused a

² Section 91.13(a), **Careless or reckless operations**, reads:

- (a) Aircraft operations for the purpose of air navigation.
No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

Section 91.173(b), **ATC [air traffic control] clearances and flight plan required**, reads:

No person may operate an aircraft in controlled airspace under IFR [instrument flight rules] unless that person has -

- (b) Received an appropriate ATC clearance.

³ Hillsboro is due south of the Dallas/Fort Worth area. Henderson is east of Hillsboro.

conflict with a commuter aircraft. (Respondent's aircraft was immediately told to turn.)

The law judge concluded that the violations had been established. He stated (Tr. at 115-116):

You were in really bad weather condition, and regardless of whether you had left from Henderson or Hillsboro, you were proceeding into one of the busiest terminal control areas in North America in real bad weather.

And nobody [i.e., ATC] was talking to you The law judge extensively discussed ATC's participation in the event, notably the lack of questioning of an apparently unauthorized aircraft. He concluded (id. at 120):

But in any event, I think that based on all of the evidence that I have heard here today, I feel that an appropriate sanction rather than 60-day would be one of a 30-day sanction, and that will be my order.

The Administrator challenges this reduction in sanction, arguing that it is without explanation and inconsistent with precedent. Respondent has not replied. We agree with the first complaint, but find that precedent does not require a 60-day sanction in these circumstances and, on that basis, we affirm the initial decision.

The Board's appellate authority over the Administrator's enforcement orders extends to amending, modifying, or reversing those orders where "safety in air commerce or air transportation and the public interest do not require affirmation." 49 U.S.C. 44709(d). The FAA Civil Penalty Administrative Assessment Act of 1992, PL No.

102-345 (which modified the above code section), provides that:

In the conduct of its hearings under this subsection, the Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law. *The Board may, consistent with this subsection, modify the type of sanction to be imposed from suspension or revocation of a certificate to assessment of a civil penalty.* (Emphasis added.)

The Administrator has not offered into evidence his sanction guidance table, nor does he contend that we must defer to any written sanction guidance on this violation. Instead he argues only that NTSB precedent requires a 60-day suspension.

The "typical" sanction we have affirmed for a non-aggravated control zone violation has been 60 days. We have, however, where appropriate, reduced the suspension period. See, e.g., Administrator v. Smith, NTSB Order No. EA-3469 (1992). We think the reduction ordered by the law judge does not exceed our discretion. First, it is significant that respondent did have a clearance. As compared to the usual case where no clearance is sought, here respondent sought and obtained a clearance. Second, the law judge found that respondent traversed generally the same portion of the control zone for which his clearance had

been issued. Tr. at 114. Third, when respondent contacted ATC, the conversation was straightforward, with respondent following directions in every respect, despite the confusion on both sides caused by respondent's continuing misapprehension of his departure airport and ATC's failure to question his situation. ATC was able to redirect traffic, and, contrary to the Administrator's characterization, there is no ATC transcript or hearing transcript evidence to suggest a real emergency on the part of the controller regarding respondent's position vis-à-vis other aircraft.⁴ We decline to find that safety in air commerce or air transportation and the public interest require affirmation of a 60-day suspension.

The cases cited by the Administrator do not require more than a 30-day suspension here. Administrator v. Garvin, 7 NTSB 334 (1990), involves a very different situation where arrival control told the respondent that he was unable to give him a Terminal Control Area (TCA) clearance and respondent still failed to remain clear of the TCA. In Administrator v. DeMooy, NTSB Order No. EA-3502 (1992), the pilot had no clearance, was flying in and out of clouds, and did not contact ATC until seen by another aircraft. We disagree with the Administrator's argument

⁴ We have not considered ATC participation in determining the appropriate sanction. We rely entirely on respondent's behavior.

that the facts in this case are far more egregious than those in DeMooy.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and
2. The 30-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.⁵

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁵ For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to Federal Aviation Regulation section 61.19(f).